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PACIFIC TELESIS
Group-Washington

October 23, 1996

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: CC Docket No. 96-149

Dear Mr. Caton:

Pacific Telesis group (PTG) hereby briefly responds to some of the numerous mischaracterizations in the ex parte letter of Teleport Communications Group Inc. (TCG) dated October 8, 1996.

1. The 1996 Act Allows an InterLATA Affiliate To Provide Local Exchange Service

TCG expresses a concern about PTG's interLATA subsidiary, PBCOM, providing local exchange service. This concern has no foundation in law or policy. TCG either misreads or ignores salient provisions of the Telecommunications Act of 1996 (the Act) when it suggests that "an integrated RBOC affiliate would subvert the separate affiliate provisions of Section 272 of the 1996 Act."

The Act does not prevent a BOC's interLATA affiliate from also providing local exchange service, nor can it be inferred from the Act that such a separation is desirable. Section 272(a) only requires separation between in-region interLATA service and "[a] Bell operating company (including any affiliate) which is a local exchange carrier that is subject to the requirements of section 251(c) [i.e., an incumbent local exchange carrier on February 8, 1996, or its successor or assign]." PBCOM does not meet any of the following criteria that would bring it under section 251(c): 1) it is not a Bell operating company; 2) it is not an affiliate which was an incumbent local exchange carrier (ILEC) on February 8, 1996; and 3) it will not become a successor or assign by reason of the lease or purchase of some facilities or services from the BOC, as long as the BOC continues to provide local exchange service itself. *See* section 251(h)(1) (definition of ILEC). Therefore, PBCOM is not prevented by the separation requirement of section 272 from providing both interLATA and local exchange service.

Congress foresaw the possibility that an entity providing local exchange service but not strictly subject to the definition of an incumbent LEC could, nonetheless, be regulated as an incumbent LEC. As outlined in section 251(h)(2) (relating to treatment of comparable carriers as incumbents) such an entity must occupy a position in the market for telephone exchange service comparable to an incumbent LEC *and* must have

substantially replaced an incumbent LEC. Where these conditions have not been met—and they will not be met by any contemplated use by PBCOM of Pacific Bell's facilities and services—the separation requirements of section 272 do not come into play.

Furthermore, the Act specifically envisions that the interLATA affiliate may obtain intraLATA facilities from the BOC[1] and may market and sell telephone exchange service.[2] These provisions allow the interLATA affiliate to 1) resell the BOC's local exchange services, 2) obtain unbundled network elements from the BOC to provide local exchange service, 3) buy or lease facilities from the BOC and use them to offer local exchange service, or 4) market or sell the BOC's local exchange service on behalf of the BOC.

The flexibility of arrangements permitted under the Act is necessary for PBCOM to compete successfully in the evolving telecommunications market. Many customers want "one stop shopping," the ability to purchase all their telecommunications services in a single transaction (bundled services), and to receive a single bill for all their telecommunications needs . Our competitors—both entrenched interexchange carriers who soon will offer local exchange service, and many competitive LECs (CLECs) in California who also can offer interLATA services[3]—will be able to serve all such customer requirements. If PBCOM is handicapped and our LEC subsidiaries (Pacific Bell and Nevada Bell) are similarly constricted in their ability to offer "one stop shopping," the Commission will be less able to fulfill one of its important goals under the Telecommunications Act, namely to increase interLATA competition by BOC entry.

While PBCOM has no plans to acquire facilities by lease or purchase from its affiliated LECs,[4] there can be no realistic concern that the acquisition by the interLATA affiliate of some facilities from the BOC will give the interLATA affiliate control over bottleneck facilities, as TCG avers. First, the BOC will continue to make all of its services and facilities available: 1) under its regular tariffs, 2) as unbundled elements, 3) through resale, and 4) pursuant to the interconnection agreements required by the Act. No one will be required to go to the interLATA affiliate to obtain local exchange services or facilities. Second, the provision of services and facilities to the interLATA affiliate under section 272(e)(4) triggers the BOC's obligation to provide such facilities and services to all carriers at the same rates and on the same terms and conditions. Likewise,

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[1] Section 272(e)(4).

[2] Section 272(g)(1).

[3] 67 CLECs have been approved by the California Public Utilities Commission (CPUC) to provide service that will compete with Pacific Bell and any local service PBCOM may offer. 24 more CLECs have applications pending.

[4] In California, any acquisition by purchase or lease would require the approval of the CPUC under section 851 of the Public Utilities Code. Furthermore, any transferee CLEC would still be regulated by the CPUC. Thus, there is no possibility of "unauthorized transfer of these bottleneck facilities to an unregulated entity," as TCG alleges. TCG letter at 2.

section 272(g)(1) obliges the BOC to permit other entities to market and sell its telephone exchange services if its interLATA affiliate does so.

2. PBCOM and Its Affiliated Bell Operating Companies Will Comply with All Separation Requirements

TCG's letter repeats questions TCG raised before the CPUC regarding the compliance of PBCOM with the separation requirements of section 272 of the Act. TCG's observations were premature then and continue to be premature now. The Commission has not yet ruled in Docket 96-149 on the various issues regarding its interpretation of section 272. Its ruling will deal with many of the issues raised by TCG, such as the employee and credit requirements of section 272.[5] Needless to say, PBCOM and its affiliated BOCs will be in full compliance with section 272 (such compliance will have been approved by the Commission in its action on a section 271 application) *before* PBCOM provides in-region interLATA services.

3. ONA-Type Reports Together with Reports Provided Under Interconnection Agreements Are More Than Adequate To Enforce the Separate Affiliate Requirements

TCG asks that the Commission require elaborate and burdensome new reports relating to BOC provision of facilities and services to CLECs. In our letter of October 18, 1996, we explained why ONA-type reports are more than adequate for the Commission's oversight role. The subset of services and reporting categories presented in attachment 6 to that letter reflect access services as they are provided to interexchange carriers (IXCs). We suggested use of those categories because that is the way markets have developed. For example, DS1 and other High Capacity services are separate categories in the market, but DS3 is not separate from Multiplexing. There is no reason to expend resources to further disaggregate data unless there is a demonstrable benefit from it. TCG has provided no rationale for expanding our proposed data. Moreover additional disaggregation also risks revealing competitively sensitive information about our customers. For instance, one IXC dominates the DS0 market and data on that category will reveal information about that one IXC.

Our October 18 letter also highlighted the significance of state reports regarding the local facilities and services offered to CLECs. Additionally, we indicated our belief that private negotiations between carriers (subject to state commission approval) are the most appropriate means to develop any further reporting requirements. In fact, Pacific Bell has already held discussions with TCG on reports although those discussions were not incorporated into our current agreement. In connection with ongoing negotiations and arbitrations we have supported a set of measures to demonstrate parity in the local

[5] See TCG letter at 3 & Exhibit 2 at 21-22.

interconnection market.[6] We propose to measure what Pacific Bell supplies itself, provides to others, and to PBCOM. We will provide individual CLECs information about what we have delivered to them, so they can make a private comparison without jeopardizing sensitive market information.[7] These reports will enable our CLEC customers to be assured that we are meeting our nondiscrimination obligations to them under the Act. This process is similar to what we have traditionally provided to IXCs regarding their own service to show we are meeting their needs, and to what we have done internally to ensure good service. There is no need to replicate in federal reports the information developed and shared on a contractual basis between carriers. Instead, the Commission should allow this process of negotiation and arbitration to continue, for it is the most promising and least burdensome means to arrive at an optimal result.

In addition, the highly detailed reports on an exchange basis that TCG declares are necessary would be very costly to produce and would give TCG (and others) competitively sensitive marketing intelligence. We currently have nearly 400 exchanges in California—there are likely tens of thousands in the industry. TCG's proposal would be wasteful of the Commission's resources, burdensome to the LECs, and contrary to Congress's goal that unnecessary regulation be eliminated. While we are willing to negotiate with CLECs to provide quality of service reports that will meet their needs, such reporting has a cost, and the CLEC should be responsible for bearing these costs. Placing the burden on the BOC to produce customized reports that may not be of benefit to other than the CLEC involved, and on the Commission to review those reports is unfair, unnecessary, and not in keeping with the structure of the Act, which places principal reliance on private carrier-to-carrier agreements.

The Commission should avoid unnecessary reporting, excessive disaggregation of data that may not be meaningful in ensuring nondiscriminatory treatment, and other unnecessary requirements. If reporting requirements are not reasonable and practical, the industry could be distracted from benefiting customers and become preoccupied with reporting. Our competitors are focusing on building their businesses. While it may be to

[6] See attachment 7 to our October 1996 letter.

[7] We do intend to disaggregate CLEC trunking and unbundled loops under interconnection agreements, as TCG suggests.

their benefit to distract us from our business via reporting and other requirements, the Commission should clearly see their tactics for what they are—detrimental to the market and the public interest.

Very truly yours,

Gina Harrison

cc: Chairman Reed E.Hundt
Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Michelle M. Carey
Radhika V. Karmarkar
Cheryl E. Leanza
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